

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC THOMAS MASTERS,

Defendant-Appellant.

UNPUBLISHED

February 27, 2001

No. 219891

Macomb Circuit Court

LC No. 95-003266-FC

Before: Meter, P.J., and Neff and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from a nine-to-twenty-year sentence imposed for a plea-based conviction of solicitation of murder, MCL 750.157b(2); MSA 28.354(2)(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that he is entitled to resentencing because the prosecutor breached the plea agreement. “Where a defendant’s plea of guilty is induced by the prosecutor’s promise relating to sentencing, the terms of that agreement must be fulfilled.” *People v Swirles*, 206 Mich App 416, 418-419; 522 NW2d 665 (1994). “Where the agreement is subsequently breached, a reviewing court has discretion to choose between vacating the plea or ordering specific performance” of the bargain. *People v Nixten*, 183 Mich App 95, 97; 454 NW2d 160 (1990).

The prosecutor did not violate the plea agreement by making unfavorable remarks regarding defendant’s sentence. Because the parties had not agreed to any specific sentence, the prosecutor was free to advise the court of any circumstances the court should consider in passing sentence, MCR 6.425(D)(2)(c), as long as he did not “inject material reservations” about the plea agreement. *United States v Canada*, 960 F2d 263, 270 (CA 1, 1992). It is only if the prosecutor has agreed to take a certain position or make a specific recommendation at sentencing that the scope of his comments to the court are limited. See *People v Arriaga*, 199 Mich App 166, 168-169; 501 NW2d 200 (1993); *Nixten*, *supra* at 98-99.

The plea agreement required the prosecutor and representatives from other law enforcement agencies to disclose the full extent of defendant’s cooperation only if requested to do so by the court or defendant and there is nothing in the record to indicate that either the court or defendant made such a request. Therefore, defendant has failed to show that the prosecutor

violated that aspect of the plea agreement. In any event, our review of the record convinces us that defendant received the benefit of the bargain regarding the comments of representatives of other agencies. The letters submitted by those persons after the fact indicated that defendant cooperated with them by testifying against a coconspirator in murder and arson cases. The prosecutor presented the same information to the court at sentencing and the court stated that it considered defendant's cooperation when it imposed sentence. Accordingly, we find no basis for resentencing.

Defendant next contends that his sentence was disproportionate. A sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Although defendant had no prior criminal record, cooperated extensively with the authorities, and the presentence report recommended probation, defendant plotted the murder of another man, actively and persistently solicited two people to carry out the murder, and initially lied to the police about his involvement in the crime. In addition, the prosecutor dismissed the conspiracy charge, which carried a mandatory life sentence. MCL 750.157a(a); MSA 28.354(1)(a); MCL 750.316(1)(a); MSA 28.548(1)(a). We find that the sentence did not violate the principle of proportionality and thus the trial court did not abuse its discretion. *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998); *People v Castillo*, 230 Mich App 442, 447; 584 NW2d 606 (1998).

We agree with defendant's contention that the judgment of sentence must be corrected to reflect the correct statutory citation for solicitation of murder, which is MCL 750.157b(2); MSA 28.354(2)(2).

Affirmed and remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell